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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1268

GEORGE MARTINEZ, et al.,

Appellants,

vs.

THE STATE OF CALIFORNIA, et al.,

Appellees.

ON APPEAL FROM THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA,
FOURTH APPELLATE DISTRICT, DIVISION ONE

MOTION TO DISMISS OR AFFIRM

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GEORGE MARTINEZ, et al.,
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THE STATE OF CALIFORNIA, et al.,
Appellees.

MOTION TO DISMISS OR AFFIRM

On appeal from the Court of Appeal of the State of California, Fourth Appellate District, Division One

Pursuant to United States Supreme Court Rule 16, appellees, State of California, et al., hereby move this Court to dismiss this appeal on the ground that it does not present a substantial federal question, or, in the alternative, to affirm the decision of the Court of Appeal of the State of California

on the ground that the question presented is so insubstantial as not to warrant consideration by this Court.

STATEMENT OF THE CASE

The opinion of the Court of Appeal of the State of California, Fourth Appellate District, Division One, attached to the Jurisdictional Statement as Appendix, adequately sets forth the factual and procedural matters which have transpired.

STATUTORY PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the Constitution of the United States.

This case also involves California Government Code section 845.8(a) which states:

> "Neither a public entity nor a public employee is liable for:
>
> "(a) Any injury resulting from determining whether to parole or release a prisoner or from determining the terms and conditions of his parole or release or from determining whether to revoke his parole or release."

This case also involves 42 U.S.C. section 1983 which states:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

QUESTIONS PRESENTED

I. Does the public entity and public employee immunity for injuries resulting from a determination to parole or release a prisoner, or from determining the terms and conditions of parole or release, or from determining whether to revoke parole or release embodied in California Government Code section 845.8(a) violate either the Equal Protection Clause or the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

II. Does the parole or release of a prisoner into society create civil liability on the part of parole officials under U.S.C. section 1983 where the parolee or released person causes injury or death to a third party?

THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

I

CALIFORNIA GOVERNMENT CODE SECTION 845.8(a) DOES NOT VIOLATE EITHER THE EQUAL PROTECTION CLAUSE OR THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

Appellants apparently assert, without citing any authority, California Government Code section 845.8(a) is unconstitutional on due process and equal protection grounds. The twin concepts of due process and equal protection, although not always co-extensive, require the same type of analysis when a violation of either is alleged. *Hampton v. Mow Sun Wong* (1975) 426 U.S. 88 [96 S.Ct. 1895, 48 L.Ed.2d 495]. Substantive due process deals with protection from arbitrary legislative action, even though the person deprived of his right to life, liberty or property is afforded the fairest of procedural safeguards. In substantive law such deprivation is supportable only if the conduct from which the deprivation flows is prescribed by a reasonable legislation reasonably applied, *i.e.*, the law must not be unreasonable, arbitrary or capricious but must have a real and substantial relation to the object sought to be attained. See *Nebbia v. New York* (1933) 291 U.S. 502, 528 [78 L.Ed. 940, 949 and 54 S.Ct. 505]; *West Coast Hotel Co. v. Parrish* (1936) 300 U.S. 379, 391 [81 L.Ed. 703, 708; 57 S.Ct. 578]. The constitutional guarantee of equal protection of the laws has been judicially defined to mean that no person or class of persons shall be denied the same

protection of the laws which is enjoyed by other persons or other classes in like circumstances in their lives, liberty and property and in their pursuit of happiness. See *Truax v. Corrigan* (1921) 257 U.S. 312, 336-338 [66 L.Ed. 254, 264-265]; *Kentucky, Co. v. Paramount Exch.* (1922) 262 U.S. 544, 550 [67 L.Ed. 1112, 1115; 43 S.Ct. 636]. The concept of equal protection of the laws compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment.

Although research has disclosed no case, either federal or state, passing on the constitutionality of California Government Code section 845.8(a), other than the opinion rendered by the California Court of Appeal, Fourth Appellate District, Division One, in the instant action, the California courts have upheld the constitutionality of the California Tort Claims Act as a whole (*Datil v. City of Los Angeles* (1968) 263 Cal.App.2d 655, 660-661; *Miller v. Hoagland* (1966) 247 Cal.App.2d 57, 63) as well as the immunities for injuries caused by patients of mental institutions (*Goff v. City of Los Angeles* (1967) 254 Cal.App.2d 45, 51-52) and for injuries by or to prisoners (*Hughes v. County of San Diego* (1973) 35 Cal.App.3d 349, 351-353; *Reed v. City and County of San Francisco* (1965) 237 Cal.App.2d 23, 24-25). The *Hughes* case instructs that when an immunity under the California Tort Claims Act is under constitutional attack it can be overturned only where the statute bears no rational relationship to a conceivable legitimate state purpose. The stated purpose of California Government Code section 845.8(a) is to permit correctional personnel to make determinations of release or parole unfettered by any fear of tort liability (as set forth in the Law Revision Commission comment to that statute). To

impose tort liability in cases of parole and/or prisoner release would have a chilling effect on the decision-making process, impede implementation of trial release programs, prolong incarceration unjustifiably for many prisoners, and act as an impediment to the implementation of innovative parole and release programs. There is certainly a rational relationship between legitimate state purposes and Government Code section 845.8(a).

II

CORRECTIONAL OFFICIALS ARE NOT LIABLE UNDER THE FEDERAL CIVIL RIGHTS ACT, (42 U.S.C. § 1983) FOR THEIR DETERMINATION TO RELEASE A PRISONER WHERE THE PRISONER CAUSES DEATH OR INJURY TO A THIRD PARTY

Appellants allege appellees' release of the parolee in this case into society constituted a violation of the Federal Civil Rights Act (42 U.S.C. § 1983), when the life of appellants' decedent was taken. It has been established that state parole officials perform quasi-judicial functions in processing applications for parole and approving parole work or probation and are immune from liability for damages under the Federal Civil Rights Act. See *Burkes v. Callion* (9th Cir. 1970) 433 F.2d 318; *Allison v. California Adult Authority* (9th Cir. 1969) 419 F.2d 822; *Villalobos v. Dickson* (9th Cir. 1969) 408 F.2d 835; *Silver v. Dickson* (9th Cir. 1968) 403 F.2d 642, *cert. denied*, 394 U.S. 990.

Appellants have attempted to distinguish cases of this nature by urging they involved prisoner actions against parole officials for alleged denial of the right to liberty within

the context of processing individual parole applications. Appellees submit the fact that the previously cited cases dealt with prisoner actions against correctional officials is a mere difference which does not serve to distinguish the principles of those cases from the instant case. Appellants cite no authority to this Court upholding federal civil rights liability of parole officials in an action brought by a third party allegedly suffering harm at the hand of a released parolee.

The quasi-judicial immunity referred to in the aforementioned cases contains no language limiting applications of the immunity to an action brought by prisoners, but rather emphasizes application of the immunity based upon the "function" being performed. As members of the California Adult Authority, the individual appellees herein were performing a quasi-judicial function when they determined to release Thomas. Appellants allege malice as a factor against absolute immunity in this case. However, there were no *facts* alleged in the complaint for wrongful death to show malice. As the California Court of Appeal observed (Jurisdictional Statement, p. A-7) Thomas was eligible for parole, appellees determined he was ready for parole, and in the absence of a sure formula for appellees knowing when a convict is rehabilitated and ready to enter society, released Thomas. There is no liability for the complained-of injuries as pleaded under the Federal Civil Rights Act.

Appellants contend the cases of *Scheuer v. Rhodes* (1974) 416 U.S. 32 and *Wood v. Strickland* (1975) 420 U.S. 308 are applicable to the instant case. In *Scheuer* the question was whether the Governor of Ohio, the Adjutant General of the Ohio National Guard, and various guard officers and enlisted

members, could be liable under 42 U.S.C. section 1983 as a result of students killed on a state university campus during a period of alleged civil disorder in May of 1970, or whether these persons enjoyed an "absolute immunity" from liability. The Court, at 248, observed the Federal Civil Rights Act would be drained of meaning if a governor, or other high executive officer, could, through supreme edict, override conflicting rights of person and property without review of such an edict through the judicial process. *Scheuer* is easily distinguished from the present case. First, appellees do not contend that their privilege is absolute, only that a decision to release a prisoner is a quasi-judicial function made within the scope of their employment. Second, at the time appellees determined to release Thomas, they did so without knowledge their decision would override any conflicting personal or property rights, knowledge which this Court observed to be an important consideration in its decision in *Scheuer*.

In *Wood v. Strickland, supra*, this Court held school officials are entitled to a qualified good-faith immunity from liability for damages under the Federal Civil Rights Act, but are not immune from liability where they had actual or constructive knowledge that action taken within their sphere of official responsibility would violate the constitutional rights of the affected student, or where action was taken with malicious intention to cause a deprivation of rights or injury to the student. In *Wood*, high school students had been expelled from school for violating a school regulation prohibiting the use or possession of intoxicating beverages at school or school activities. Suits filed by the students alleged malice and ill will on the part of school officials, as well as the violation of "substantive due process." As in the *Scheurer*

case, the public officials in *Wood* acted with knowledge that their decision would have adverse consequences on the rights of defined individuals, *i.e.*, those persons who were the subjects of the decision. In this case, no such knowledge existed in the minds of appellees. The subject of appellees' decision was not any known consequences to the rights of Mary Ellen Martinez, as those rights would be affected several months later, but rather the propriety of the parole of Thomas.

CONCLUSION

No substantial federal question is presented by this appeal. Appellees respectfully move the Court to dismiss the appeal or, in the alternative, affirm the decision of the Court of Appeal of the State of California, Fourth Appellate District, Division One.

Dated: April 27, 1979

Respectfully submitted,

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